Attorney Docket No.: 10487-1
Serial No. 09/491,747

REMARKS

This is a full response to the outstanding non-final Office Action, dated April 21, 2004.

1. Interview Summary

The Applicant thanks the Examiner for the courtesy extended to Applicant s Counsel in the December 6, 2004 telephone conference regarding the case. In the telephone conference, the Examiner and the Applicant's counsel discussed what clarifications could be added to the independent claims to more clearly indicate that they cover a method and system that allows bidding for more than just the top position in order to define the claims over U.S. Patent No. 5,835,896 to Fisher (herein after "*Fisher*").

Thereafter, on December 7, 2004, the Applicant's counsel provided the Examiner with a draft claim 1 with proposed revisions, exactly as it appears in the Amendments To Claims Section above. The examiner stated that the draft of claim 1 provided by the Applicant's counsel is sufficient to overcome *Fisher*.

2. Present Status Of The Claims

After entry of the amendments made herein, claims 1-22 and 26-27 remain pending in the Application. The Applicant has amended independent claims 1 and 11 as agreed with the Examiner on December 7, 2004. Additionally, the Applicant herewith submits remarks specifically responding to the rejections maintained by the Examiner in the pending Office Action. It is believed that no new matter has been added to the Application.

3. Summary Of The Rejections

The pending Office Action maintains the rejections of the previous Office Action mailed April 21, 2004. The Office Action provides specific reasons for rejection of claims 1-2, 11-13 and 22 under 35 U.S.C. § 102. However, the Office Action fails to provide any further explanation as to why claims 3-10, 14-21 and 26-27 remain rejected.

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The Applicant will thus assume that the reasons for rejecting claims 3-10, 14-21 and 26-27 remain solely those stated in the April 21, 2004 Office Action.

4. Response To Rejections Of Claims 1-2, 11-13 And 22 Under 35 U.S.C. §102.

The Applicant traverses the rejections to claims 1-2, 11-13 and 22.

For brevity, and because the Applicant's arguments against the rejection of claims 1-2, 11-13 and 22 over *Fisher* are equally applicable for all of these claims, the Applicant uses independent claims 1 and 11 as illustrative of the response for all of the currently-pending claims 1-2, 11-13 and 22. Furthermore, the traversal is made with the understanding that dependent claims 2, 12-13 and 22 are also patentably distinct over the prior art and may include additional features that, beyond those recited in claims 1 and 11, provide further, separate, and independent bases for patentability.

Independent claims 1 and 11 have both been amended according to the draft of claim 1 for which the Examiner stated is patentable over Fisher. Specifically, independent claims 1 and 11 have been amended to more clearly state that the claimed method or system is for an auction that has "two or more positions of priority" available for bidding. Further, grammatical changes in claims 1 and 11 have been made in order to clarify that the two or more positions are available for bidding upon.

In light of the Examiner's statement that claim 1, as amended, overcomes the rejection over *Fisher*, and the similar amendments made to claim 11, Applicant asserts that the rejection of independent claims 1 and 11 has been traversed, and amended claims 1 and 11 are in condition for allowance. Dependent claims 2, 12-13 and 22 depend from claim 1 or 11, and therefore, those claims are in a condition for allowance as well. However, Applicant reserves to right to argue independent bases for patentability for claims 2, 12-13 and 22 should it be necessary.

5. Response To Rejections Of Claims 3-10, 14-21 And 26-27.

The Application traverses the rejections of claims 3-10, 14-21 and 26-27.

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The Office Action rejects claims 3-10, 14-21 and 26-27 without further explanation. The Applicant will thus assume that the Examiner maintains the same reasons for rejection of these claims that were recited in the April 21, 2004 Office Action. To this extent, the Applicant's reference to the Response of July 21, 2004 as if the Applicant's arguments that were in the July 24, 2004 Response were restated herein.

However, claims 3-10, 14-21 and 26-27 depend from claims 1 or 11. Therefore, each of claims 3-10, 14-21 and 26-27 contain the limitations of either claim 1 or 11. Although, claims 3-10, 14-21 and 26-27 may include additional features that, beyond those recited in claims 1 and 11, provide further, separate, and independent bases for patentability, claims 3-10, 14-21 and 26-27 are allowable for at least the same reasons that claims 1 and 11 are allowable. Notwithstanding, the Applicant reserves to right to argue independent bases for patentability for claims 3-10, 14-21 and 26-27 should it be necessary.
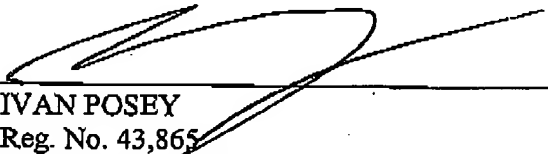
CONCLUSION

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. In view of the foregoing discussions, it is clear that the cited art, individually or in combination, does not teach all of the elements of any claim of the present invention. Thus, the claimed invention is patentably distinct over the prior art. Therefore, reconsideration and allowance of all of claims 1-22 and 26-27 is believed to be in order, and an early Notice of Allowance to this effect is respectfully requested.

If the Examiner should have any questions concerning the foregoing, the Examiner is invited to telephone the undersigned attorney at (310) 712-8311. The undersigned attorney can normally be reached Monday through Friday from about 9:30 AM to 5:30 PM Pacific Time.

Respectfully submitted,

Dated: December 9, 2004

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